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NATIONAL TASK FORCE ON LAWYER WELL-BEING

Creating a Movement To Improve
Well-Being in the Legal Profession

August 14, 2017

Enclosed is a copy of *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change* from the National Task Force on Lawyer Well-Being. The Task Force was conceptualized and initiated by the ABA Commission on Lawyer Assistance Programs (CoLAP), the National Organization of Bar Counsel (NOBC), and the Association of Professional Responsibility Lawyers (APRL). It is a collection of entities within and outside the ABA that was created in August 2016. Its participating entities currently include the following: ABA CoLAP; ABA Standing Committee on Professionalism; ABA Center for Professional Responsibility; ABA Young Lawyers Division; ABA Law Practice Division Attorney Wellbeing Committee; The National Organization of Bar Counsel; Association of Professional Responsibility Lawyers; National Conference of Chief Justices; and National Conference of Bar Examiners. Additionally, CoLAP was a co-sponsor of the 2016 ABA CoLAP and Hazelden Betty Ford Foundation's study of mental health and substance use disorders among lawyers and of the 2016 Survey of Law Student Well-Being.

To be a good lawyer, one has to be a healthy lawyer. Sadly, our profession is falling short when it comes to well-being. The two studies referenced above reveal that too many lawyers and law students experience chronic stress and high rates of depression and substance use. These findings are incompatible with a sustainable legal profession, and they raise troubling implications for many lawyers' basic competence. This research suggests that the current state of lawyers' health cannot support a profession dedicated to client service and dependent on the public trust.

The legal profession is already struggling. Our profession confronts a dwindling market share as the public turns to more accessible, affordable alternative legal service providers. We are at a crossroads. To maintain public confidence in the profession, to meet the need for innovation in how we deliver legal services, to increase access to justice, and to reduce the level of toxicity that has allowed mental health and substance use disorders to fester among our colleagues, we have to act now. Change will require a wide-eyed and candid assessment of our members' state of being, accompanied by courageous commitment to re-envisioning what it means to live the life of a lawyer.

This report's recommendations focus on five central themes: (1) identifying stakeholders and the role each of us can play in reducing the level of toxicity in our profession, (2) eliminating the stigma associated with help-seeking behaviors, (3) emphasizing that well-being is an indispensable part of a lawyer's duty of competence, (4) educating lawyers, judges, and law students on lawyer well-being issues, and (5) taking small, incremental steps to change how law is practiced and how lawyers are regulated to instill greater well-being in the profession.

The members of this Task Force make the following recommendations after extended deliberation. We recognize this number of recommendations may seem overwhelming at first. Thus we also provide proposed state action plans with simple checklists. These help each stakeholder inventory their current system and explore the recommendations relevant to their group. We invite you to read this report, which sets forth the basis for why the legal profession is at a tipping point, and we present these recommendations and action plans for building a more positive future. We call on you to take action and hear our clarion call. The time is now to use your experience, status, and leadership to construct a profession built on greater well-being, increased competence, and greater public trust.

Sincerely,

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Director
Texas Lawyers Assistance Program
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"Lawyers, judges and law students are faced with an increasingly competitive and stressful profession. Studies show that substance use, addiction and mental disorders, including depression and thoughts of suicide—often unrecognized—are at shockingly high rates. As a consequence the National Task Force on Lawyer Well-being, under the aegis of CoLAP (the ABA Commission on Lawyer Assistance programs) has been formed to promote nationwide awareness, recognition and treatment. This Task Force deserves the strong support of every lawyer and bar association."

*David R Brink**
Past President
American Bar Association

* David R. Brink (ABA President 1981-82) passed away in July 2017 at the age of 97. He tirelessly supported the work of lawyer assistance programs across the nation, and was a beacon of hope in the legal profession for those seeking recovery.



“A tree with strong roots laughs at storms.” — Malay Proverb

Judges occupy an esteemed position in the legal profession and society at large. For most, serving on the bench is the capstone of their legal career. The position, however, can take a toll on judges’ health and well-being. Judges regularly confront contentious, personal, and vitriolic proceedings. Judges presiding over domestic relations dockets make life-changing decisions for children and families daily.⁷⁷ Some report lying awake at night worrying about making the right decision or the consequences of that decision.⁷⁸ Other judges face the stress of presiding over criminal cases with horrific underlying facts.⁷⁹

Also stressful is the increasing rate of violence against judges inside and outside the courthouse.⁸⁰ Further, many judges contend with isolation in their professional lives and sometimes in their personal lives.⁸¹ When a judge is appointed to the bench, former colleagues who were once a source of professional and personal support can become more guarded and distant.⁸² Often, judges do not have feedback on their performance. A number take the bench with little preparation, compounding the sense of going it alone.⁸³ Judges also cannot “take off the robe” in every day interactions outside the courthouse because of their elevated status in society, which can contribute to social isolation.⁸⁴ Additional stressors include re-election in certain jurisdictions.⁸⁵ Limited judicial resources coupled with time-intensive, congested dockets are a pronounced problem.⁸⁶ More recently, judges have reported a sense of diminishment

in their estimation among the public at large.⁸⁷ Even the most astute, conscientious, and collected judicial officer can struggle to keep these issues in perspective.

We further recognize that many judges have the same reticence in seeking help out of the same fear of embarrassment and occupational repercussions that lawyers have. The public nature of the bench often heightens the sense of peril in coming forward.⁸⁸ Many judges, like lawyers, have a strong sense of perfectionism and believe they must display this perfectionism at all times.⁸⁹ Judges’ staff can act as protectors or enablers of problematic behavior. These are all impediments to seeking help. In addition, lawyers, and even a judge’s colleagues, can be hesitant to report or refer a judge whose behavior is problematic for fear of retribution.

In light of these barriers and the stressors inherent in the unique role judges occupy in the legal system, we make the following recommendations to enhance well-being among members of the judiciary.

14. COMMUNICATE THAT WELL-BEING IS A PRIORITY.

The highest court in each state should set the tone for the importance of the well-being of judges. Judges are not immune from suffering from the same stressors as lawyers, and additional stressors are unique to work as a jurist.

⁷⁷A. Resnick, K. Myatt, & P. Marotta, *Surviving Bench Stress*, 49 FAM. CT. REV. 610, 610-11 (2011).

⁷⁸*Id.* at 611-12.

⁷⁹M. K. Miller, D. M. Flores, & A. N. Dolezilek, *Addressing the Problem of Courtroom Stress*, 91 JUDICATURE 60, 61, 64 (2007); J. Chamberlain & M. Miller, *Evidence of Secondary Traumatic Stress, Safety Concerns, and Burnout Among a Homogeneous Group of Judges in a Single Jurisdiction*, 37 J. AM. ACAD. PSYCHIATRY L. 214, 215 (2009).

⁸⁰Miller, Flores, & Dolezilek, *supra* note 79, at 60-61; *see also* T. FAUTSKO, S. BERSON, & S. SWENSEN, NAT’L CTR. FOR STATE CTS., STATUS OF COURT SECURITY IN STATE COURTS – A NATIONAL PERSPECTIVE (2013), available at http://ncsc.contentdm.oclc.org/cdm/ref/collection/facilities/id/184#img_view_container.

⁸¹I. Zimmerman, *Helping Judges in Distress*, 90 JUDICATURE 10, 13 (2006).

⁸²*Id.*

⁸³C. Bremer, *Reducing Judicial Stress Through Mentoring*, 87 JUDICATURE 244-45 (2004).

⁸⁴Resnick, Myatt, & Marotta, *supra* note 77, at 610.

⁸⁵*Id.* at 610-11; Zimmerman, *supra* note 81, at 11-12.

⁸⁶Resnick, Myatt, Marotta, *supra* note 77, at 610.

⁸⁷*Judges Are Feeling Less Respected*, NAT’L JUDICIAL C. (2017), available at <http://www.judges.org/judges-feeling-less-respected/>.

⁸⁸S. KRAUSS, N. STEK, W. DRESSEL, AM. BAR ASS’N COMM’N ON LAW. ASSISTANCE PROGRAMS, HELPING JUDGES, MODULE 1 – OVERVIEW OF A JUDICIAL ASSISTANCE PROGRAM (2010); Zimmerman, *supra* note 81, at 13.

⁸⁹R. L. Childers, *Got Stress? Using CoLAP and Its New Judicial Assistance Project*, JUDGES JOURNAL (2006); Chamberlain & Miller, *supra* note 79, at 220.

15. DEVELOP POLICIES FOR IMPAIRED JUDGES.

It is essential that the highest court and its commission on judicial conduct implement policies and procedures for intervening with impaired members of the judiciary. For example, the highest court should consider adoption of policies such as a Diversion Rule for Judges in appropriate cases. Administrative and chief judges also should implement policies and procedures for intervening with members of the judiciary who are impaired in compliance with Model Rule of Judicial Conduct 2.14. They should feel comfortable referring members to judicial or lawyer assistance programs. Educating judicial leaders about the confidential nature of these programs will go a long way in this regard. Judicial associations and educators also should promote CoLAP's judicial peer support network, as well as the National Helpline for Judges Helping Judges.⁹⁰

16. REDUCE THE STIGMA OF MENTAL HEALTH AND SUBSTANCE USE DISORDERS.

As reflected in Recommendation 4, the stigma surrounding mental health and substance use disorders poses an obstacle to treatment. Judges are undisputed leaders in the legal profession. We recommend they work to reduce this stigma by creating opportunities for open dialogue. Simply talking about these issues helps combat the unease and discomfort that causes the issues to remain unresolved. In a similar vein, we encourage judges to participate in the activities of lawyer assistance programs, such as volunteering as speakers and serving as board members. This is a powerful way to convey to lawyers, law students, and other judges the importance of lawyer assistance programs and to encourage them to access the programs' resources.

17. CONDUCT JUDICIAL WELL-BEING SURVEYS.

This report was triggered in part by the Study and the Survey of Law Student Well-Being. No comparable research has been conducted of the judiciary. We recommend that CoLAP and other concerned entities conduct a broad-based survey of the judiciary to

determine the state of well-being and the prevalence of issues directly related to judicial fitness such as burnout, compassion fatigue, mental health, substance use disorders and help-seeking behaviors.

18. PROVIDE WELL-BEING PROGRAMMING FOR JUDGES AND STAFF.

Judicial associations should invite lawyer assistance program directors and other well-being experts to judicial conferences who can provide programming on topics related to self-care as well as resources available to members of the judiciary experiencing mental health or



- ✓ **Design well-being education specifically for judges.**
- ✓ **Connect judges for support and mentoring.**
- ✓ **Publish well-being resources tailored to judges.**

substance use disorders. Topics could include burnout, secondary traumatic stress, compassion fatigue, strategies to maintain well-being, as well as identification of and intervention for mental health and substance use disorders.

Judicial educators also should make use of programming that allows judges to engage in mutual support and sharing of self-care strategies. One such example is roundtable discussions held as part of judicial conferences or establishing a facilitated mentoring

⁹⁰The ABA-sponsored National Helpline for Judges Helping Judges is 1-800-219-6474.



program or mentoring circle for judicial members. We have identified isolation as a significant challenge for many members of the judiciary. Roundtable discussions and mentoring programs combat the detrimental effects of this isolation.⁹¹

Judicial associations and educators also should develop publications and resources related to well-being, such as guidebooks. For example, a judicial association could create wellness guides such as “A Wellness Guide for Judges of the California State Courts.” This sends the signal that thought leaders in the judiciary value well-being.

19. MONITOR FOR IMPAIRED LAWYERS AND PARTNER WITH LAWYER ASSISTANCE PROGRAMS

Judges often are among the first to detect lawyers suffering from an impairment. Judges know when a lawyer is late to court regularly, fails to appear, or appears in court under the influence of alcohol or drugs. They witness incomprehensible pleadings or cascading requests for extensions of time. We believe judges have a keen pulse on when a lawyer needs help. With the appropriate training, judges’ actions can reduce client harm and save a law practice or a life. We make the following recommendations tailored to helping judges help the lawyers appearing before them.

Consistent with Recommendation 5.1, judges should become familiar with lawyer assistance programs in their state. They should learn how best to make referrals to the program. They should understand the confidentiality protections surrounding these referrals. Judges also should invite lawyer assistance programs to conduct educational programming for lawyers in their jurisdiction using their courtroom or other courthouse space.

Judges, for example, can devote a bench-bar luncheon at the courthouse to well-being and invite representatives of the lawyers assistance program to the luncheon.

Judicial educators should include a section in bench book-style publications dedicated to lawyer assistance programs and their resources, as well as discussing how to identify and handle lawyers who appear to have mental health or substance use disorders. Further, judges and their staff should learn the signs of mental health and substance use disorders, as well as strategies for intervention, to assist lawyers in their courtrooms who may be struggling with these issues. Judges can also advance the well-being of lawyers who appear before them by maintaining courtroom decorum and de-escalating the hostilities that litigation often breeds.

⁹⁰The ABA-sponsored National Helpline for Judges Helping Judges is 1-800-219-6474.

⁹¹For more information on judicial roundtables, see AM. BAR ASS’N COMM’N ON LAW. ASSISTANCE PROGRAMS, JUDICIAL ROUNDTABLES, available at https://www.americanbar.org/content/dam/aba/administrative/lawyer_assistance/lis_colap_Judicial_Roundtable_Protocols.authcheckdam.pdf.

